

PART 1509—CONTRACTOR QUALIFICATIONS

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AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8839, Mar. 8, 1984, unless otherwise noted.

1509.000 Scope of part.

This part implements FAR part 9 and provides policy and procedures pertaining to contractor's responsibility; debarment, suspension, and ineligibility; and organizational conflicts of interest.

Subpart 1509.4—Debarment, Suspension and Ineligibility

SOURCE: 65 FR 37291, June 14, 2000, unless otherwise noted.

1509.403 Definitions.

The “Debarring Official” and the “Suspending Official” as defined in FAR 9.403 is a designated individual located in the Office of Grants and Debarment. This Agency official is authorized to make the determinations and provide the notifications required under FAR subpart 9.4 or this subpart, except for the determinations required by FAR 9.405–1(a) which are to be made by the Head of the Contracting Activity. All compelling reason determinations to be made by the Debarring or Suspending Official under FAR subpart 9.4 or this subpart will be made only

after coordination and consultation with the Head of the Contracting Activity. See also 2 CFR part 1532.

[65 FR 37291, June 14, 2000, as amended at 72 FR 2427, Jan. 19, 2007]

1509.406 Debarment.

1509.406–3 Procedures.

(a) *Investigation and referral*—(1) Contracting officer responsibility. (i) When contracting personnel discover information which indicates that a cause for debarment may exist, they shall promptly report such information to the cognizant Chief of the Contracting Office (CCO). Purchasing agents in simplified acquisition activities which do not come under the direct cognizance of a CCO shall report such information by memorandum, through their immediate supervisor, and addressed to the cognizant CCO responsible for their office's contract acquisitions.

(ii) Contracting officers shall review “The List of Parties Excluded from Federal Procurement and Nonprocurement Programs” to ensure that the Agency does not solicit offers from, award contracts to, or consent to sub-contracts with listed contractors.

(2) *Chief of the Contracting Office responsibility*. When the Chief of the Contracting Office determines that sufficient information is available to indicate that a cause for debarment may exist, such information shall be promptly reported by memorandum to the HCA. The memorandum provides the Chief of the Contracting Office's assessment of the information, any investigative report or audit, and any additional information he/she has discovered.

(3) *HCA responsibility*. Upon receipt of a report of a suspected debarment situation, the HCA shall take the following actions:

(i) Notify the Director, Suspension and Debarment Division, that investigation of a potential debarment has been initiated.

(ii) Review the reported information.

(iii) Investigate as necessary to verify or develop additional information.

(iv) Refer the matter through the Suspension and Debarment Division to

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the Debarring Official for consideration of debarment; request that the Suspension and Debarment Division evaluate the information and, if appropriate, refer the matter to the Debarring Official for consideration of debarment; or recommend to the Suspension and Debarment Division that the matter be closed without further action because the facts do not warrant debarment.

(v) Obtain legal counsel's opinion on referrals or recommendations made to the Debarring Official.

(vi) Notify EPA Contracting Officers of those Contractors who are ineligible for solicitation, award, or subcontracting but who do not appear on the GSA Consolidated List; e.g., those who are ineligible based on a settlement reached by the Debarring Official under which the Contractor has agreed to voluntarily exclude itself from participation in Government contracting/subcontracting for a specified period or because of a Notice of Proposal to Debar.

(4) *Any official.* When information is discovered which may indicate potential criminal or civil fraud activity, such information must be referred promptly to the EPA Office of Inspector General.

(5) *Debarring Official's responsibility.* The Debarring Official shall:

(i) Review referrals from the HCA together with the HCA's recommendations, if any, and determine whether further consideration by the Debarring Official is warranted and take such actions as are required by FAR subpart 9.4;

(ii) Obtain the HCA's recommendation prior to reaching a voluntary exclusion settlement with a Contractor in lieu of debarment;

(iii) Promptly notify the HCA of Contractors with whom a settlement in lieu of debarment has been reached under which the Contractor voluntarily excludes itself from or restricts its participation in Government contracting/subcontracting for a specified period; and of Contractors who have received a Notice of Proposal to Debar.

(b) [Reserved]

1509.407 Suspension.

1509.407-3 Procedures.

The procedures prescribed in 1509.406-3(a) shall be followed under conditions which appear to warrant suspension of a Contractor.

Subpart 1509.5—Organizational Conflicts of Interests

1509.500 Scope of subpart.

This subpart establishes EPA policy and procedures for identifying, evaluating, and resolving organizational conflicts of interest. EPA's policy is to avoid, neutralize, or mitigate organizational conflicts of interest. If EPA is unable to neutralize or mitigate the effects of a potential conflict of interest, EPA will disqualify the prospective contractor or will terminate the contract when potential or actual conflicts are identified after award.

[49 FR 8839, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1509.502 Applicability.

This subpart applies to all EPA contracts except agreements with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

1509.503 Waiver.

The Head of the Contracting Activity may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in accordance with FAR 9.503. The Assistant General Counsel for Contracts and Information Law shall be consulted on such waiver requests.

[49 FR 8839, Mar. 8, 1984, as amended at 61 FR 29316, June 10, 1996]

1509.505-4 Obtaining access to proprietary information.

Contractors gaining access to confidential business information of other companies in performing advisory services for EPA shall comply with the special requirements of 40 CFR part 2 and

the provisions of their contracts relating to the treatment of confidential business information.

1509.505-70 Information sources.

(a) *Disclosure.* Prospective EPA Contractors responding to solicitations or submitting unsolicited proposals shall provide information to the Contracting Officer for use in identifying, evaluating, or resolving potential organizational conflicts of interest. The submittal may be a certification or a disclosure, pursuant to paragraph (a) (1) or (2) of this section.

(1) If the prospective contractor is not aware of any information bearing on the existence of any organizational conflict of interest, it may so certify.

(2) Prospective contractors not certifying in accordance with paragraph (a)(1) of this section must provide a disclosure statement which describes concisely all relevant facts concerning any past, present, or planned interests relating to the work to be performed and bearing on whether they, including their chief executives, directors, or any proposed consultant or subcontractor, may have a potential organizational conflict of interest.

(b) *Failure to disclose information.* Any prospective contractor failing to provide full disclosure, certification, or other required information will not be eligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations, EPA will consider any inadvertent failure to provide disclosure certification as a “minor informality” (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

(c) *Exception.* Where the Contractor has previously submitted a conflict of interest certification or disclosure for a contract, only an update of such statement is required when the contract is modified.

[49 FR 8839, Mar. 8, 1994. Redesignated at 59 FR 18619, Apr. 19, 1994]

1509.507-1 Solicitation provisions.

(a) *Advance notice of limitations.* The Contracting Officer shall alert prospective contractors by placing a notice in the solicitation whenever a particular acquisition might create an organizational conflict of interest. The notice will:

(1) Include the information prescribed in (FAR) 48 CFR 9.507-1;

(2) Refer prospective contractors to this subpart; and

(3) Require proposers to disclose relevant facts concerning any past, present, or currently planned interests relating to the work described in the solicitation.

(b) *Required solicitation provision.* The Contracting Officer shall include the provisions at 1552.209-70 and 1552.209-72 in all solicitations, except where the following applies:

(1) An Organizational Conflict of Interest provision is drafted for a particular acquisition (see Section 1509.507-1(a));

(2) When the procurement is with another Federal agency (however, the provision is included in solicitations issued under the Small Business Administration’s (SBA) 8(a) program); and

(3) When the procurement is accomplished through simplified acquisition procedures, use of the provision is optional.

[49 FR 8839, Mar. 8, 1994. Redesignated and amended at 59 FR 18619, Apr. 19, 1994; 61 FR 57337, Nov. 6, 1996; 62 FR 33572, June 20, 1997]

1509.507-2 Contract clause.

(a) The Contracting Officer shall include the clause at 1552.209-71 in all contracts in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

(b) The Contracting Officer shall include the clause at 1552.209-73 in all solicitations and contracts for Superfund work in excess of the simplified acquisition threshold and, as appropriate, in small purchases for Superfund work.

(c) The Contracting Officer shall include the clause at 1552.209-74 or its alternates in the following solicitations and contracts for Superfund work in

excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures for Superfund work. The Contracting Officer shall include the clause at 1552.209-74 in all Response Action Contract (RAC) solicitations and contracts, except Site Specific solicitations and contracts. The term "RAC" in the Limitation of Future Contracting clauses includes not only RAC solicitations and contracts but other long term response action solicitations and contracts that provide professional architect/engineer, technical, and management services to EPA to support remedial response, enforcement oversight and non-time critical removal activities under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments Reauthorization Act of 1986; and the Robert T. Stafford Natural Disaster Act pursuant to the Federal Response Plan and other laws to help address and/or mitigate endangerment to the public health, welfare or environment during emergencies and natural disasters, and to support States and communities in preparing for the responses to releases of hazardous substances.

(1) Alternate I shall be used in all Emergency and Rapid Response Services (ERRS) solicitations and contracts, except site specific solicitations and contracts. The term "ERRS" in the Limitation of Future Contracting clauses includes not only ERRS solicitations and contracts but other emergency response type solicitations and contracts that provide fast responsive environmental cleanup services for hazardous substances/wastes/contaminants/material and petroleum products/oil. Environmental cleanup response to natural disasters and terrorist activities may also be required. ERRS pilot scale studies are included in the term "treatability studies."

(2) Alternate II shall be used in all Superfund Technical Assistance and Removal Team (START) solicitations and contracts. The term "START" in the Limitation of Future Contracting clauses include not only START solicitations and contracts but other site removal and technical support solicitations and contracts that include activi-

ties related to technical analyses in determining the nature and extent of contamination at a site and making recommendations regarding response technologies.

(3) Alternate III shall be used in all Environmental Services Assistance Team (ESAT) solicitations and contracts.

(4) Alternate IV shall be used in all Enforcement Support Services (ESS) solicitations and contracts. The term "ESS" in the Limitation of Future Contracting clauses not only includes ESS solicitation and contracts but other enforcement support type solicitations and contracts that involve removal actions, mandatory notices to Potentially Responsible Parties (PRPs), penalty assessments, public comment periods, negotiations with PRPs, and statutes of limitations for pursuing cost recovery. The enforcement support services required under the contract may be conducted to support EPA enforcement actions under any environmental statute.

(5) Alternate V shall be used in all Superfund Headquarters Support solicitations and contracts. The Contracting Officer is authorized to modify paragraph (c) of Alternate V to reflect any unique limitations applicable to the program requirements.

(6) Alternate VI shall be used in all Site Specific solicitations and contracts.

(d) The Contracting Officer shall insert the clause at 1552.209-75 in Superfund solicitations and contracts in excess of the simplified acquisition threshold, where the solicitation or contract does not include (EPAAR) 48 CFR 1552.211-74, Work Assignments, Alternate I, or a similar clause requiring conflict of interest certifications during contract performance. This clause requires an annual conflict of interest certification from contractors when the contract does not require the submission of other conflict of interest certifications during contract performance. Contracts requiring annual certifications include: Site Specific contracts, the Contract Laboratory Program (CLP), and the Sample Management Office (SMO) contracts. The annual certification requires a contractor

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to certify that all organizational conflicts of interest have been reported, and that its personnel performing work under EPA contracts or relating to EPA contracts have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The annual certification shall cover the one-year period from the date of contract award for the initial certification, and a one-year period starting from the previous certification for subsequent certifications. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

[59 FR 18619, Apr. 19, 1994, as amended at 61 FR 57337, Nov. 6, 1996; 70 FR 61569, Oct. 25, 2005]

PART 1511—DESCRIBING AGENCY NEEDS

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1511.000 Scope of part.

1511.011 Solicitation Provisions and Contract Clauses.

1511.011-70 Reports of work.

1511.011-71 [Reserved]

1511.011-72 Monthly progress report.

1511.011-73 Level of effort.

1511.011-74 Work assignments.

1511.011-75 Working files.

1511.011-76 Legal analysis.

1511.011-77 Final reports.

1511.011-78 Advisory and assistance services.

1511.011-79 Information resources management.

AUTHORITY: Sec. 205(c), 63 Sta. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 61 FR 57337, Nov. 6, 1996, unless otherwise noted.

1511.000 Scope of part.

This part implements FAR part 11 and provides policy and procedures for describing Agency needs.

1511.011 Solicitation Provisions and Contract Clauses.

1511.011-70 Reports of work.

Contracting officers shall insert one of the contract clauses at 1552.211-70 when the contract requires the delivery of reports, including plans, evaluations, studies, analyses and manuals. The basic clause should be used when reports are specified in a contract at-

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tachment. Alternate I is used to specify reports in the contract schedule.

[78 FR 46290, July 31, 2013]

1511.011-71 [Reserved]

1511.011-72 Monthly progress report.

Contracting Officers shall insert a contract clause substantially the same as the clause at 1552.211-72 when monthly progress reports are required.

1511.011-73 Level of effort.

The Contracting Officer shall insert the clause at 1552.211-73, Level of Effort-Cost Reimbursement Term Contract, in cost-reimbursement term contracts including cost contracts without fee, cost-sharing contracts, cost-plus-fixed-fee (CPFF) contracts, cost-plus-incentive-fee contracts (CPIF), and cost-plus-award-fee contracts (CPAF).

[78 FR 46290, July 31, 2013]

1511.011-74 Work assignments.

(a) *Policy.* When issuing work assignments, the independent government cost estimate shall not be released to the contractor. In most cases the Contracting Officer (CO) should authorize the contractor to expend only the estimated labor hours necessary to develop the work plan and to initiate preliminary tasks which must be performed before work plan approval can be made. However, in cases where the uncertainties involved in the effort are of such a magnitude that there is no reasonable expectation that the contractor can estimate the level of effort required by the tasks, objectives, or outcomes of the requirement, the CO may provide a ceiling level of effort for the entire work assignment at the time of its issuance. In such cases, the specific uncertainties precluding reasonable estimation of the required level of effort on the contractor's part must be documented in the contract file.

(b) *Contract clause.* The CO shall insert the contract clause at 1552.211.74, Work Assignments, in cost-reimbursement type term form contracts when work assignments are used. For Superfund contracts, except for contracts